IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 461 of 1990

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

and

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

CHHANABHAI GANDABHAI

Versus

STATE OF GUJARAT

Appearance:

MS BANNA S DUTTA for Appellant

MR MA BUKHARI APP for Respondent No. 1

CORAM : MISS JUSTICE R.M.DOSHIT

and

MR.JUSTICE A.L.DAVE

Date of decision: 21/12/2000

ORAL JUDGEMENT (Per : MISS JUSTICE R.M.DOSHIT)

The learned advocate Mr. N.I.Dave who had been appointed to represent the appellant herein had expressed his inability to conduct the appeal on account of poor vision. The learned advocate Ms. Banna Datta has, therefore, been appointed to represent the appellant and has been furnished the paper-book.

This appeal arises of the judgment and order dated 21st April, 1990, passed by the learned Additional Sessions Judge, Surendranagar, in Sessions Case No. 39/89. The appellant before this court is the accused no.2.

One Narbheram Laxman and the appellant Chhana Ganda were charged for offence punishable under section 302 IPC. It was alleged that on 18th February, 1989, at around 8-30 PM, the accused no. 2, the appellant caused stab injuries to the deceased Adam Ismail and the deceased Adam Ismail died of the said injuries. The appellant has, thus, committed offence punishable under section 302 IPC. It was further alleged that when the accused no. 2 killed the deceased Adam Ismail, the accused no. 1 abetted the commission of offence and thus committed offence punishable under section 302 read with section 114 IPC.

The accused and the deceased were the residents of Surendranagar City of District-Surendranagar and were residing in the same locality. On 18th February, 1989, at around 9-00 PM one Kamuben wife of Nanu Ismail lodged the FIR with Surendranagar City Police Station. She informed the police that at around 8-30 that evening, one Chhana Ganda the appellant approached her house and had a knife in his hand. He started abusing his brother-in-law Adam Ismail and inquired of the said Adam Ismail why he had stabbed his friend Narbheram that evening near Mahalaxmi and started stabbing him with his knife. The said Adam Ismail fell down and started bleeding profusely and lost the consciousness. The said FIR was registered as CR.No. I-66/89 and the investigation was taken over by the Police Inspector Jethalal Patel (PW-19). After investigation, arrest of the accused and the recovery of the offending weapons, he filed a chargesheet in the court of the learned Chief Judicial Magistrate, Surendranagar. The matter was committed to the Sessions Court. The accused were tried by the learned Additional Sessions Judge, Surendranagar. The learned Judge having tried the accused, acquitted the accused no. 1 Narbheram Laxman giving him the benefit of doubt and convicted the accused no.2 Chhana Ganda for offence punishable under

section 302 IPC and sentenced him with life imprisonment and a fine of Rs.1000/-. In the event of default in payment of fine, sentence of imprisonment for six months was passed. Feeling aggrieved, accused no. 2 Chhana Ganda has preferred the present appeal.

The prosecution has examined Dr. Indiraben Upadhyay (PW-1) to prove the medical certificate (EX-8) and the stab wound caused to the accused no. 1 Narbheram earlier on that day at around 4-30 PM in the afternoon. The said witness has stated that she had examined accused Narbheram at around 5-30 the said afternoon. He had given the history of injury by an iron rod. He had received an incised wound of 1 X 1/2 X 1/2 below the pelvis. The prosecution has examined Dr. Anjanaben N. Shah (PW-2). The said witness had performed the autopsy on the body of the deceased Adam Ismail. She has proved the Postmortem Note (EX-10). She has certified that the deceased had received a bone deep incised wound on the right side of the forehead, a bone deep incised wound over the right mandibular region, a bone deep incised wound over right side of nose, and bruises on the left side of the chest, the right side of the chest, on right side of the back over iliac creast, on the left side of the chest from left hypochondrium to back and on the right arm. The deceased had suffered fractures on the right side of frontal bone, right side of parietal bone, nosal bone, right side of mandible, 7th, 9th and 10th ribs. The incised wound was found over the frontal lob of the brain and a contused lacerated wound was found over the superior surface of the right lob of the liver. She opined that the probable cause of death was " Cranio Cerebral injury and injury to the liver." She opined that the injuries nos. 1, 2 and 3 could have been caused by a sharp weapon, while injuries nos. 4 to 9 could have been caused by a hard and blunt weapon. The internal injuries nos. 1 and 4 were corresponding to external injuries nos. 1 and 4. The injuries were sufficient to cause death in course of nature. The prosecution has examined the eye witness Kamuben (PW-3). She has stated that her brother-in-law Adam Ismail was residing with her. On the day of the incidence, one person had come on motor-cycle and had dropped Adam Ismail at home. Soon thereafter the accused no. 2 came there with a stick and a knife. He hit the deceased with the stick on head. The deceased fell down and thereafter he (accused no. 2) started stabbing him and gave 5 to 6 blows. The accused no. 1 Narbheram had also come with a knife and had stabbed the deceased. The deceased died on the spot. She went to the Police Station alone to lodge the FIR and came back along with the police. She has further stated that on

that day in the afternoon her brother-in-law the deceased Adam Ismail had stabbed the accused no. 1 Narbheram near Ram Theatre. The said incidence took place on account of some monetary transaction between the deceased Adam Ismail and the accused Narbheram Laxman. The prosecution has also examined the eye witnesses Rajesh Amarshibhai (PW-4), who has not supported the prosecution and has been declared hostile to the prosecution. Daud Suma (PW-5) has supported the prosecution and his evidence is consistent with that of the informant Kamuben (PW-3). The prosecution case is also supported by the witness Rafik Adam (PW-6) to the extent that earlier on that day in the afternoon the deceased Adam Ismail had stabbed the accused Narbheram near Ram Theatre. He has also stated that at around 7-30 that afternoon, the accused no. 2 had inquired of him as to who had stabbed Narbheram with the knife and he named the deceased Adam Ismail. The witness Champaben Gordhanbhai (PW-7) has not supported the prosecution case and has been declared hostile to the prosecution. The panch witnesses Popat Pancha (PW-8), Bharat Vadilal (PW-9), Suresh Bhailal (PW-10), Govindbhai Amarshibhai (PW-11), Anvar Bapalbhai (PW-12), Navinchandra Popatlal (PW-13), Bipin Nyalchand (PW-14), and Vashram Ganda (PW-15) have not supported the prosecution case and have been declared to be hostile to the prosecution. The panchnama of the scene of the offence (EX-32) and the map of the place of the offence (EX-25) reveal the presence of blood on the Kachcha road some 10 ft. from the hut of the deceased Adam Ismail. The telltale marks of the deceased having writhed with pain were found present in the dirt. The medical evidence proves that the deceased Adam Ismail died homicidal death. The FSL report (EX-23) discloses that the muddamal knife recovered from the appellant-accused no. 2 had blood stains of human blood group 'B' and that the blood of the deceased was of group 'B'. The conduct of the eye witness Kamuben and her evidence are natural and there is no reason why her evidence should not be believed. In our view, the prosecution has proved the guilt of the appellant-accused no.2 beyond reasonable doubt. The motive of the assault on the deceased has also been established . The learned trial Judge has, therefore, rightly convicted the appellant-accused no. 2 for offence punishable under section 302 IPC.

In view of the above discussion, the conviction and sentence passed on the appellant-accused no. 2 Chhana Ganda is confirmed. The appeal is dismissed.

(MS R.M.DOSHIT J)

(A.L.DAVE J)

JOSHI